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WILLIAM C. FUESS
FUESS & DAVIDENAS
SUITE II-G
10951 SORRENTO VALLEY ROAD
SAN DIEGO CA 92121

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DEC 22 2006

OFFICE OF PETITIONS

In re Application of :
John S. Fox :
Application No. 10/775,792 : ON PETITION
Filed: 9 February, 2004 :
Atty Docket No. LIG 0001P :

This is a decision on the petition filed on 15 August, 2005 (certificate of mailing date 10 August, 2005),¹ styled as a petition under 37 CFR 1.137(a) and 1.181, which, in the absence of a fee, is treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment.²

The Office apologizes for the delay in responding to the present petition and regrets any inconvenience to petitioner.

This application became abandoned on 2 December, 2004, for failure to timely submit a reply to the Notice to File Corrected Application Papers mailed on 1 October, 2004, which set a two (2) month shortened period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 10 June, 2005.

In the present petition, petitioner requests that the Office withdraw the holding of abandonment due to non-receipt of the Notice mailed on 1 October, 2004.

A review of the record indicates no irregularity in the mailing of the Office communication mailed on 1 October, 2006, and in the

¹ It is noted that the petition miscaptioned the application number as "10/775,702" and the last name of the inventor is misspelled. However the petition has now been matched with the proper application file.

² In the absence of the petition fee, which is required by law, the PTO can only treat the instant petition as a (feeless 1.181) petition to withdraw the holding of abandonment. See Krahn v. Comm'r, 15 USPQ2d 1823, 1825 (E.D. Va. 1990).

absence of any irregularity in the mailing, there is a strong presumption that the Office action was properly mailed to the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner, stating that the practitioner did not receive the Office communication and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.³ For example, if a two (2) month period for reply was set in the non-received Office action, a copy of the docket report showing all replies docketed for a date two (2) months from the mail date of the non-received Office action must be submitted as documentary proof of non-receipt of the Office action.

The showing of record is insufficient to warrant withdrawal of the holding of abandonment at this time. Specifically, petitioner has not provided a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed. The docket record must be attached to and referenced in practitioner's statement.

As such, the petition is dismissed. However, the dismissal is without prejudice to reconsideration pending submission of the items required above.

Any request for reconsideration must be filed within **TWO MONTHS** of the date of this decision. **This period may not be extended.**⁴

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300

³ M.P.E.P. § 711.03(c); See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

⁴ 37 CFR 1.181(f).

Attn: Office of Petitions

By hand: Customer Service Window
Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions